

REMARKS

By the foregoing amendment, applicant has adopted the Examiner's suggestion to amend claim 1 to change "whereby" to "wherein" and change the previous filed "A" to a "a" to facilitate clarity. Applicant respectfully submits that such amendments overcome the Examiner's claim interpretation and claim objection set forth in the previous Office Action.

Reconsideration of the previous rejection of claims 1-4, 6-9, 12-15, 17-22 and 24-25 under 35 U.S.C. §103(a) as being unpatentable over Brauner (WO 97/39954) in view of Buckethal (U.S. Patent 3,816,181) and Umiker (U.S. Patent 5,395,010) is respectfully requested in view of the following comments.

The Examiner draws the conclusion that Brauner teaches a flat or semi-flat element to be used in a collapsible container (see, Abstract and Figs. 1-5), including a partly or completely circumambient frame (citing page 2, lines 2-5) and an intermediate wall section (Fig. 1, No. 1) which element is manufactured through molding of polymeric material (page 1, lines 27-28), whereby the frame is used as a carrying structure (page 2, lines 19-21).

The Office Action asserts that "although the frame is connected to the wall at its corner, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to have rearranged the connection point such that it is connected along a straight wall portion of the frame since, absent unexpected results, it has been held that rearranging parts of an invention involves only routine skill in the art" (emphasis added). This premise completely misses the mark.

It is applicant who has discovered the problem that "morphing" is caused by the temperature related shrinking which is relatively great in most thermoplastic materials, but particularly great in a product of the type taught by Brauner in which thicker parts, which naturally contain more heat

than thinner parts of the same product, continue to shrink when cooling outside the mold. Such will inevitably cause warping in the product; see, 2nd full paragraph on page 1 of the instant application.

The prior art has been to design products with different material thicknesses, for example, where the containers of the type taught by Brauner with the walls and bottom does not have to be particularly strong and the carrying structure of the container has to be strong since a lot of containers are to be stacked on top of each other. The thickness of the sidewalls and bottom will have to be overdimensioned to be adapted to the injection molding process since the carrying structure has to be sturdy. However, such a response to the problem, of course, leads to an economic product because of the additional thickness to be built into solving the problem of warpage.

Applicant has solved the problem of warpage by producing a flat or semi-flat element, including a partly or completely circumambient frame by injection molding of a polymeric material, wherein the element includes a carrying structure, constituted by the frame and an intermediate wall section which is connected to the frame by a resilient section which is part of the wall section. Nothing of this type is shown or suggested in Brauner.

As stated above, it was applicant who has discovered the problem and a method of correcting the problem of warping in products of the type shown by Brauner. However, merely because the instant claimed invention has applicability to a product of the type shown by Brauner, it does not follow that Brauner recognized the problems nor suggested any method to solve the same, as applicant has done.

The Examiner draws the conclusion that Brauner teaches in Figs. 1-5 the creation of a flat or semi-flat element and that it would be obvious to move the point where the wall element is connected to the framework. How is it possible for the Examiner to discern that teaching from the

disclosure of Brauner? Where does Brauner say that the element is flat? Where does Brauner say that there is or isn't problems with flatness? Where does Brauner state that this is problem is easily solved and how? Where does it say that you are allowed to bend the gravity line and that the injected plastic material being allowed to solidify before injecting the pressurized gas, is the same as a thinned out pivot section? And, in such a case, how does it help one producing such products with the post shrinkage related problems? The Examiner interprets features from prior art references in a way that is only possible after having seen the present invention. This blatant application of a hindsight review of applicant's specification and claims to determine how applicant has recognized and then solved a particular problem cannot be discerned from the combination of Brauner alone or together with the other references relied upon in the Office Action.

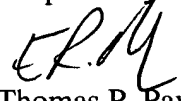
For all the foregoing reasons, applicant respectfully submits that the stated rejection under 35 U.S.C. §103(a) does not establish a *prima facie* case of obviousness for the claimed invention.

Firstly, the prior art has not recognized the problem stated by applicant in the present application. Moreover, applicant's solution for solving that problem is not clear from any combination of Brauner with the secondary references, absent the suggestion provided by applicant's own disclosure. Thirdly, applicant's own disclosure is not part of the prior art and cannot provide the suggestion to combine the references as set forth in the Office Action. Fourth, the PTO Board of Patent Appeals and Interferences and its reviewing courts (the Federal Circuit) have often stated "our reviewing courts have often advised the Patent and Trademark Office that it can satisfy the burden of establishing a *prima facie* case of obviousness only by showing some objective teaching in either the prior art, or knowledge generally available to one of ordinary skill in the art, that 'would lead' that individual to combine the relevant teachings of the references" (citing In re Fein, 5 USPQ

1596 (Fed. Cir. 1988); In re Newell, 13 USPQ 2d 1248 (Fed. Cir. 1989). The Board continued “accordingly, an Examiner cannot establish obviousness by locating references which describe various aspects of a patent applicant’s invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done”; see, Ex parte Levengood, 28 USPQ 2d 1300, 1302 (BPAI 1993).

For all the foregoing reasons, applicant respectfully requests withdrawal of the instant rejection and passage of the application to issue.

Respectfully submitted,


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